

ORIGINAL  
FILE

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re Applications of ) MM DOCKET NO. 92-6  
)  
NORMANDY BROADCASTING CORP. ) File No. BRH-910129UR  
)  
For Renewal of License of )  
Station WYLR(FM) (95.9 MHz), )  
Glens Falls, New York )  
)  
and )  
)  
LAWRENCE N. BRANDT ) File No. BPH-910430MB  
)  
For a Construction Permit for )  
a New FM Station on 95.9 MHz )  
at Glens Falls, New York )

To: Administrative Law Judge  
Richard L. Sippel

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Federal Communications Commission  
Office of the Secretary

MASS MEDIA BUREAU'S COMMENTS ON  
PETITION TO MODIFY AND ENLARGE ISSUES

1. On February 24, 1992, Lawrence N. Brandt ("Brandt") filed a Petition to Modify and Enlarge Issues. The Media Bureau submits the following comments.

2. Brandt seeks the addition of an issue to determine whether Normandy Broadcasting Corp. ("Normandy"), licensee of Station WYLR(FM), Glens Falls, New York, misrepresented facts to the Commission when it certified in its renewal application to its compliance with § 73.3526 of the Commission's Rules. Specifically, Brandt alleges that Normandy did not place in WYLR(FM)'s public file on time or at all its quarterly programs/issues lists during the last license term. In support,

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Brandt provides copies of WYLR's programs/issues lists from 1987 through the first quarter of 1990, which were obtained from another proceeding. In an unrelated request, Brandt also seeks modification of the "Queensbury" basic qualifications issue, Hearing Designation Order, DA 92-11 (released January 21, 1992) at ¶ 6(b), to reflect the Review Board's recent directive in Memorandum Opinion and Order, FCC 92R-16 (released February 19, 1992) ("MO&O").

3. Section 1.229 of the Commission's Rules states that a motion to enlarge issues shall contain specific allegations of fact sufficient to support the action requested. Furthermore, such allegations of fact, except for those of which official notice may be taken, shall be supported by affidavits, in the instant case, of a person or persons who actually examined WYLR(FM)'s public files. However, Brandt's request for a misrepresentation issue against Normandy is devoid of any supporting affidavits or a request for official notice.<sup>1</sup>

4. Moreover, it is well established that a mandatory element of misrepresentation is a motive or intent to deceive. See Armando Garcia, 3 FCC Rcd 1065, 1067 (Rev. Bd. 1988), rev.

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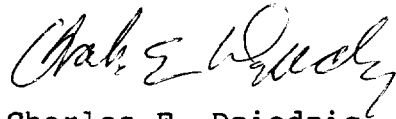
<sup>1</sup> For example, although Brandt alleges that no programs/issues list exists for the first quarter of 1989 (see Petition at p. 3), Brandt has provided no evidence to support this accusation. Moreover, some of the attached exhibits do not relate specifically to WYLR(FM). See e.g., Exhibit A which appears to relate to Station WWSC(AM).

denied, 3 FCC Rcd 4767 (1988); Fox River Broadcasting, Inc., 88 FCC 2d 1132, 1137 (Rev. Bd. 1982), modified, 93 FCC 2d 127 (1983). Brandt's request for a misrepresentation issue against Normandy is devoid of any reference to a motive or intent on Normandy's part to deceive the Commission. As the Review Board has cautioned, "[m]isrepresentation . . . charges are very grave matters. They ought not be bandied about." Scott and Davis Enterprises, Inc., 88 FCC 2d 1090, 1099 (Rev. Bd. 1982). Since Brandt bears the burden of making a prima facie case for the enlargement of issues, Priscilla L. Schwier, 4 FCC Rcd 2659, 2660 (1989), and his motion is significantly lacking in fundamental respects, Brandt's request for a misrepresentation issue against Normandy must be rejected.

5. The Bureau takes a different position with respect to Brandt's request to modify the "Queensbury" issue. In its MO&O at ¶ 10, the Review Board directed that the "Queensbury" issue in the instant proceeding be framed exactly as was a similar issue in Ocean Pines, 4 FCC Rcd 3490 (Rev. Bd. 1990). Thus, to the

extent that Brandt requests modification to the "Queensbury" issue to track the language in Ocean Pines, the Bureau concurs.

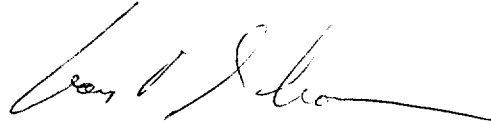
Respectfully submitted,  
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March 10, 1992

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau, certify that I have on this 10th day of March 1992, sent by regular First Class United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Comments on Petition to Modify and Enlarge Issues" to the following:

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